



Mike, Bill, #140

Office of the Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

March 23, 2006

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Joseph T. Rannazzisi, Deputy Chief, Enforcement Operations for the Drug Enforcement Administration, following Mr. Rannazzisi's appearance before the Subcommittee on September 27, 2005. The subject of the hearing was H.R. 3889, the "Methamphetamine Epidemic Elimination Act of 2005."

Thank you for the opportunity to supplement Mr. Rannazzisi's testimony. The Office of Management and Budget has advised that there is no objection to the presentation of these responses from the standpoint of the Administration's program. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Robert C. Scott
Ranking Minority Member

**House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security**

H.R. 3889, the “Methamphetamine Epidemic Elimination Act”

September 27, 2005

**Joseph T. Rannazzisi
Deputy Chief
Office of Enforcement Operations
Drug Enforcement Operations**

- 1. During your testimony, you stated, under certain circumstances, mandatory minimum sentences do not appear to have an effect on the incidence of crime. Please elaborate.**

The establishment and enforcement of mandatory minimum sentencing guidelines has coincided with a steady and consistent decline in the crime rate. That said, and while some drug dealers use drugs, in general, drug dealers and drug users are two different groups of people to which the law can appropriately be applied. Because of this difference, mandatory minimum sentences are most likely to influence the behavior, and therefore, the incidence of crime associated with drug dealers, as opposed to drug users.

Drug users may simply not incorporate statutory limits in their decision to use drugs, as the user's addiction needs supersede any legal deterrence that the statutory limits bring. In essence, dealers who handle powder cocaine, with a 500 gram threshold, versus dealers who prefer crack cocaine, with a 5 gram threshold, will vary the amount they keep in their immediate possession, including the types of substance they choose to traffic, based on the serious prison sentences awaiting them as a consequence of their voluntary actions. Drug users on the other hand, are much less likely to view the mandatory minimum guidelines as a deterrent because of the nature of the addiction.

- 2. Please discuss to what extent prosecutors may determine what is and is not appropriate use of mandatory minimum sentences, particularly in light of the Department's prohibition against charge bargaining. See John Ashcroft, Memorandum to All Federal Prosecutors, “Department Policy Concerning Charging Criminal Offenses, Disposition of Charges and Sentencing” (September 22, 2003). How does the Department express its judgment that charging a mandatory minimum sentence is not appropriate in a given case? Which mandatory minimums, under what circumstances, are not appropriate?**

Congress, not the Department, has determined under which circumstances mandatory minimums are appropriate: for high priority areas of national concern that most affect public safety. Mandatory minimums are designed for the most serious offenders, including sexual predators of children, drug traffickers, those who use guns to commit violent crimes, and certain repeat offenders. For these types of offenders, mandatory minimums will be imposed pursuant to Congressional policy.

The policy of the Department of Justice, pursuant to the Ashcroft Memorandum, is that in all federal criminal cases, federal prosecutors must charge the most serious, readily provable offense or offenses supported by the facts of the case. The most serious provable offense is that which generates the most substantial sentence -- whether it is through a sentencing guideline or an applicable mandatory minimum. However, mandatory minimums apply only to the most serious offenders and high priority areas of national concern. In addition, the sentencing guidelines and federal law provide two ways by which a defendant can prevent a mandatory minimum from applying to his or her case: substantial assistance and the "safety valve" provisions contained in 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2. These protections ensure that younger, low-level, less-culpable defendants are not sentenced to long periods of prison time. If an offender has been sentenced to a mandatory minimum, he likely had a prior criminal history, was a high-level participant, failed to cooperate with the Government, or violence was involved in the crime. Where appropriate, the Department recommends sentences below the mandatory minimum for those defendants who qualify for these protections.

For those serious offenses where Congress has imposed mandatory minimums, only those defendants who qualify for substantial assistance motions and the "safety valve" should be exempted from sentences reflecting the mandatory minimum.

3. Please provide the Committee with research studies or other findings to support the contention that increased incarceration and lengthening sentences at the federal level have reduced the national crime in violent and property offenses.

Crime rates fluctuate as a function of many interconnected variables. *See, The Crime Drop in America* (Alfred Blumstein & Joel Wallman eds., 2000). Specifically, there is evidence that increasing prison populations reduces crime through deterrence and incapacitation. According to a study published in *The Quarterly Journal of Economics* in 1996, the impact of increased incarceration on crime is "two to three times greater than previous estimates would imply." According to the study, the results are robust across all of the crime categories examined. The study found that incarcerating one additional prisoner reduces the number of crimes by approximately fifteen per year. In addition, the study also concluded that relying on incarceration is an "effective approach at reducing crime." *See* Steven D. Levitt, *The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation*, 111 Q.J. Econ. 319, 324, 348 (1996).